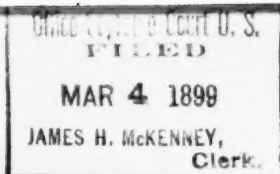




225  
No. 729.



*Motion to advance.*  
IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

*Filed Mar. 4, 1899.*

*No. 729*

SHIRLEY T. HIGH AND JESSIE M. HIGH, APPELLANTS,

vs.

FREDERICK E. COYNE, COLLECTOR, ETC., AND ELLEN T.  
HIGH, EXECUTRIX, ETC., APPELLEES.

**MOTION TO ADVANCE.**

And now come said appellants, by A. M. Pence, their counsel, and move the court to advance said cause for argument and disposition, and assign the following reasons therefor and make the following statement:

*1st.* The bill filed seeks to impeach the constitutionality of sections 29, 30, and 31 of an act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898.

*2d.* The sections in question impose a tax upon legacies and distributive shares of personal property exceeding ten thousand dollars derived from persons dying subsequent to

said enactment, there being an exemption of the portion going to the widow, and it also provides for the method of collecting same.

*3d.* Appellants are the children and legatees of James L. High, who died testate October 3, 1898, in Chicago, Cook county, Illinois, where his will was probated, and in and by his will he devised and bequeathed all his estate, real and personal, to his widow and said appellants, his only children, share and share alike, and appointed his widow, Ellen T. High, his executrix.

That the personal estate so bequeathed exceeds two hundred and fifteen thousand dollars (\$215,000), and the share of the tax so imposed by such statute upon the estates so bequeathed to appellants exceeds two thousand dollars (\$2,000).

That Frederick E. Coyne, who is collector for the first district, Illinois, seeks to collect such tax and demands a return of such tax and the payment thereof to him as such collector by said executrix, and threatens to collect the same by due process of law, and such executrix threatens to make such return and pay said tax if not enjoined; that such tax, if valid, is a lien upon the real estate so devised to appellants by said testator as well as upon the said legacies.

*4th.* The bill filed sets forth the facts above stated, and alleges that said proposed tax is invalid, and that said act is unconstitutional for the following reasons:

(a.) That the tax in question is a direct tax upon the legacies in question, both in legal effect and by the express terms of the act, and is not apportioned by said act among the States according to population, as required by the Constitution.

(b.) That if it be an indirect tax it is not uniform in its operations, for the reason that it exempts from its operation

all legacies under the value of ten thousand dollars (\$10,000).

(c.) That the right of inheritance, if it be a tax upon the privilege of inheriting, is within the exclusive power of the States to grant and regulate and is not subject to abridgment or taxation by the General Government.

That the bill prays that the portion of the statute in question be held unconstitutional and the said tax to be void, and to remove the lien of such tax as a cloud upon their real estate so devised to them, and that said collector be enjoined from demanding and collecting said tax and said executrix from paying same.

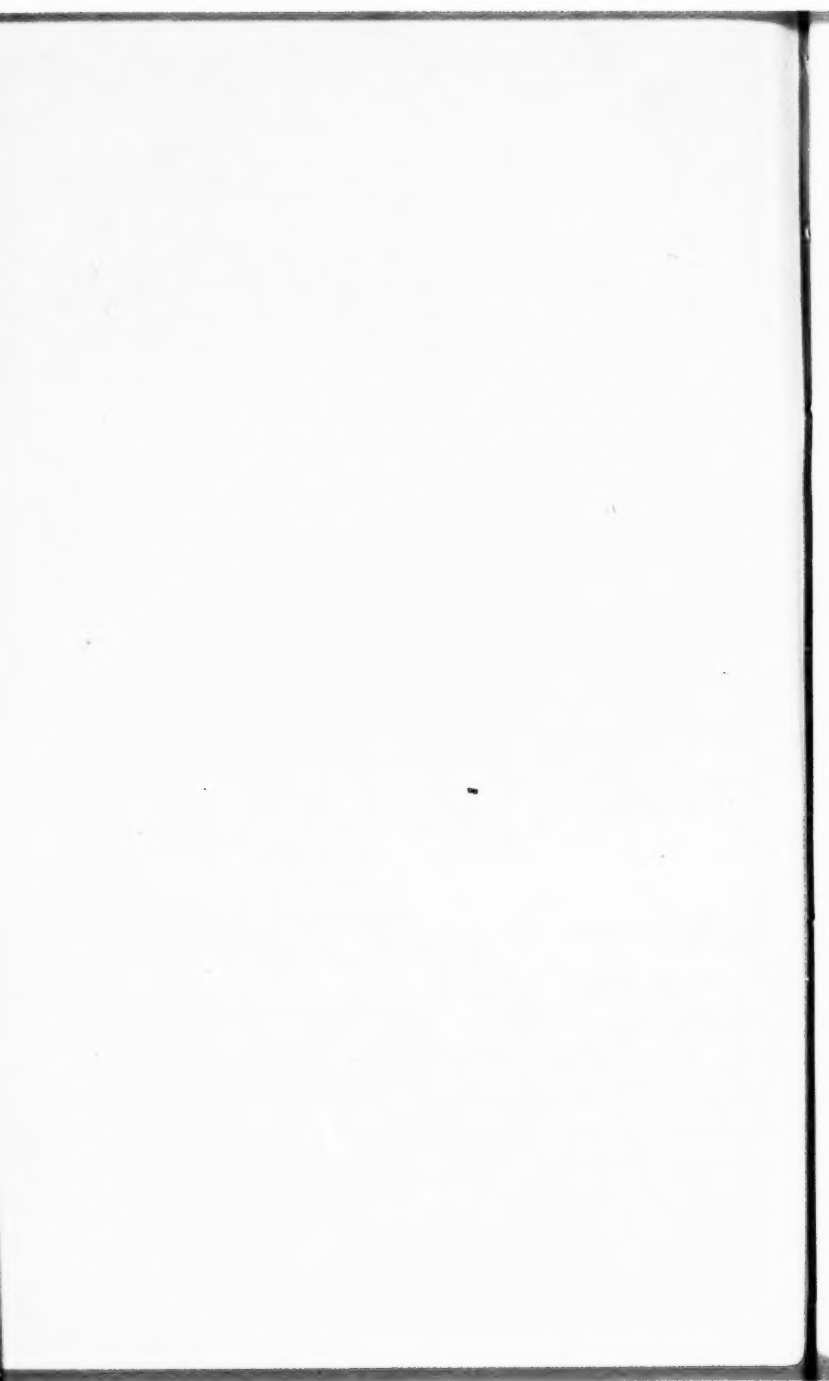
*5th.* A general demurrer was filed both by the collector and the executrix, and upon a hearing the bill was dismissed for want of equity. The opinion of the court will be found on page 21 of the Transcript.

An appeal was prayed and allowed and a bond given which was made a supersedeas.

*6th.* That the collection of the revenues of the Government are interfered with by such litigation and the rights of appellants are interfered with. Wherefore said cause ought to be advanced and the said questions so raised be determined within a short day.

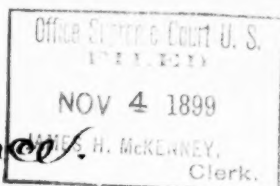
Respectfully submitted.

A. M. PENCE,  
*Counsel for Appellants.*



No. 384.

Motion to advance.



Supreme Court of the United States, <sup>1</sup>

OCTOBER TERM, 1899. No. 387.

*Filed Nov. 4, 1899.*

EBEN J. KNOWLTON and THOMAS  
A. BUFFUM, Executors of the  
Last Will and Testament of  
Edwin F. Knowlton, de-  
ceased,

Plaintiffs in Error,

vs.

Notice of Motion  
to Advance.

<sup>2</sup>

FRANK R. MOORE, United States  
Collector of Internal Revenue,  
First Collection District, State  
of New York.

In error to the Circuit Court of the United States for  
the Eastern District of New York.

To Hon. JOHN K. RICHARDS,  
Solicitor General of the United States:

<sup>3</sup>

Notice is hereby given that the plaintiffs in error  
in the above entitled cause will move the Supreme  
Court of the United States on Monday, November  
6, 1899, or as soon thereafter as the motion can be  
heard, to advance the above entitled cause on the  
docket and assign the same for argument on the 4th  
day of December, 1899, upon the grounds stated in  
said motion, a copy of which is hereto attached.

J. G. CARLISLE,

For Plaintiffs in Error.

## 4 SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1899. No. 387.

EBEN J. KNOWLTON and THOMAS  
A. BUFFUM, Executors of the  
Last Will and Testament of  
Edwin F. Knowlton, de-  
ceased,

Plaintiffs in Error,

vs.

Motion to Ad-  
vance.

5

FRANK R. MOORE, United States  
Collector of Internal Reve-  
nue, First Collection District,  
State of New York.

In error to the Circuit Court of the United States  
for the Eastern District of New York.

And now come the plaintiffs in error, by their  
attorney, J. G. Carlisle, and move the Court to ad-  
vance the above entitled cause on the docket and  
assign the same for argument on Monday, Decem-  
ber 4, 1899, to be heard with the case of High *et al.*  
6 *vs. Coyne et al.* (No. 729).

This action was brought in the United States Cir-  
cuit Court for the Eastern District of New York  
against Frank R. Moore, Collector of Internal Reve-  
nue, to recover the sum of \$42,084.67, with inter-  
est, on account of taxes paid under protest on the  
personal estate of Edwin F. Knowlton, under the  
29th and 30th Sections of the Act of Congress ap-  
proved June 13, 1898, imposing a tax upon per-  
sonal property held in charge or trust by  
administrators, executors and trustees for  
the satisfaction and payment of legacies

and distributive shares. The ground upon which 7  
the recovery is sought is that the said sections are  
unconstitutional and the said tax invalid. The  
Court below held the said sections to be constitu-  
tional and that the said tax was valid, and, upon  
demurrer, dismissed the complaint with costs. This  
writ of error is prosecuted to reverse that judgment.

The case of *High et al. vs. Coyne et al.*, above re-  
ferred to, involves the same question as to the con-  
stitutionality of the law and the validity of the said  
tax, and has been advanced by order of the Court  
and assigned for hearing on the 4th day of Decem-  
ber, 1899.

J. G. CARLISLE, 8  
For Plaintiffs in Error.



IN THE SUPREME COURT OF THE UNITED  
STATES.

---

*The Fidelity Insurance, Trust and  
Safe Deposit Company, Executor  
under the will of Daniel Craig,  
Deceased, Plaintiff in Error,*

vs.

*Penrose A. McClain, Defendant in  
Error.*

Of October Sessions,  
1899.

No. .

---

IN ERROR TO THE CIRCUIT COURT OF THE  
UNITED STATES FOR THE EASTERN DISTRICT  
OF PENNSYLVANIA.

---

TO THE HONORABLE THE JUDGES OF THE SUPREME COURT:

The petition of the Fidelity Insurance, Trust and Safe  
Deposit Company, executor as aforesaid, respectfully shows:

*First.* The writ of error in this case was taken by your petitioner as plaintiff from a judgment of the Circuit Court of the United States, for the Eastern District of Pennsylvania, in a case therein pending, wherein Penrose A. McClain, Collector of United States Internal Revenue for the First District of Pennsylvania, was defendant. The action was brought to recover money paid by the plaintiff to the Collector under protest after demand made by the Collector for taxes assessed against the plaintiff as executor of the estate of Daniel Craig, deceased. Said assessment was made under sections 29, 30 and 31, of the Act of Congress approved June 13, 1898,

entitled: "an Act to provide ways and means to meet war expenditures and for other purposes."

In the declaration filed by the plaintiff in the Circuit Court, recovery of the amount thus paid under protest was sought upon the ground that the Act of Congress was in derogation of rights secured to citizens of the United States by the provisions of the Federal Constitution as follows:—

(a.) Article 1, section 8:—

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

(b.) Article 1, section 2, paragraph 3:—

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

To this declaration the defendant demurred upon the ground that the Act of Congress was constitutional.

The court below in a brief opinion of which a copy is annexed to this petition, sustained the demurrer and entered judgment for the defendant.

A writ of error was then taken to this court in accordance with the provisions of section 699 of the Revised Statutes, which provide:—

"A writ of error may be allowed to review any final judgment at law \* \* \* without regard to the sum or value in dispute. \* \* \*

"*Third.*—Any final judgment of the Circuit Court \* \* \* in any civil action against an officer of the revenue for any act done by him in the performance of his official duty, or for the recovery of any money exacted by or paid to him which shall have been paid into the Treasury.

"*Fourth.*—Any final judgment at law \* \* \* of any Circuit Court \* \* \* in any case brought on account of the deprivation of any right, privilege, or immunity secured by the Constitution of the United States."

*Second.*—Your petitioner further shows to your Honorable Court that there is now pending upon the docket of your Honorable Court, as of October Sessions, 1899, No. 225, an appeal from a decree of the Circuit Court of the United States for the Northern District of Illinois, in which Shirley

T. High *et al.*, executors, are appellants, and F. E. Coyne, Collector, is appellee, in which the Circuit Court of the United States for the Northern District of Illinois refused to enjoin the said Coyne, as Collector, from enforcing the payment of a tax due by the appellants under the same statute, and that, upon said appeal, the question of the constitutionality of said Act of Congress of June 13th, 1898, is raised.

*Third.*—Your petitioner shows that, in addition to the amount involved in the present suit, in which judgment was entered against it by the Circuit Court of the United States for the Eastern District of Pennsylvania, your petitioner is executor of other estates upon which the estimated amount of the tax exceeds \$350,000, and although the tax in said other estates has not yet been assessed, it is of the greatest importance for the prompt settlement and distribution of said estates that the question raised upon this record should be promptly determined.

Wherefore your petitioner prays your Honorable Court to make an order directing that this cause should be advanced upon the docket, and should be heard in connection with or immediately after said case of High *vs.* Coyne, October Sessions, 1899, No. 225, which your petitioner is informed is assigned for argument on December 4th, 1899.

And your petitioner will ever pray.

THE FIDELITY INSURANCE, TRUST AND SAFE  
DEPOSIT COMPANY,

H. GORDON MCCOUCH,

*Secretary.*

RICHARD C. DALE,  
SAMUEL DICKSON,  
JOHN C. BULLITT,

*Of Counsel.*

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.

H. Gordon McCouch, being duly sworn according to law, doth depose and say, I am the secretary of the petitioner, the statements contained in the foregoing petition are just and true as I verily believe.

H. GORDON McCOUCH.

Sworn and subscribed to before me, this fourteenth day of November, 1899.

W. C. HARRIS,  
*Notary Public.*

## UNITED STATES CIRCUIT COURT.

*The Fidelity Insurance, Trust and  
Safe Deposit Company, Executor  
under the will of Daniel Craig,*

vs.

*Penrose A. McClain.*

October Sessions, 1899.

No. 2.

By THE COURT, DALLAS AND MCPHERSON, JJ.:

The demurrer filed to the plaintiff's statement of demand raises the question whether the succession tax or duty imposed by sections 29, 30, and 31 of the Act of Congress approved June 13th, 1898, is in conflict with the provisions of the Federal Constitution. Two clauses of the Constitution are invoked:—

(a.) Article I., section 8, which provides as follows:—

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

(b.) Article I., section 2, paragraph 3, which provides as follows:—

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

This question has already been considered by the Circuit Court of the United States for the Northern District of Illinois, in the case of *High vs. Coyne*, 93 Fed. Rep., 450, and the contention of the plaintiff that the statute is in conflict with the Federal Constitution was not sustained.

The court is informed that the case is now pending, on appeal, in the Supreme Court of the United States.

In view of the great importance of the question and the necessity of its ultimate determination by the court of last resort, we feel that it is proper for this court to follow the decision of the Circuit Court in Illinois without any independent examination of question presented.

We therefore sustain the demurrer to the plaintiff's statement, and direct that judgment in this cause be entered for the defendant.



No. 458.

Motion to advance.

FILED

DEC 1 1899

JAMES H. MCKENNEY,  
Clerk.

Supreme Court of the United States,

Filed Dec. 1, 1899.

OCTOBER TERM, 1899. No. 458

GEORGE T. MURDOCK, as executor, etc.,

Plaintiff in Error,

AGAINST

JOHN G. WARD, Collector of Internal Revenue, etc.,

Defendant in Error.

In Error to the Circuit Court of the United States for the Southern District of New York.

To the HON. JOHN K. RICHARDS,  
Solicitor General of the United States:

Notice is hereby given that the plaintiff in error in the above entitled cause will move the Supreme Court of the United States, on Monday, November 27th, 1899, or as soon thereafter as the motion can be heard, to advance the above entitled cause on the docket, and to assign the same for argument on the 4th day of December, 1899, upon the grounds stated in said motion, a copy of which is hereto attached.

CHARLES E. PATTERSON and

ALPHEUS T. BULKELEY,

Attorneys for Plaintiff in Error.

6

## SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1899. No.

|   |  |   |                       |
|---|--|---|-----------------------|
| 7 | GEORGE T. MURDOCK, as executor, etc.,<br><br>Plaintiff in Error,<br>AGAINST<br>JOHN G. WARD, Collector of Internal Revenue, etc.,<br>Defendant in Error. | } | Motion to<br>Advance. |
|---|--|---|-----------------------|

8 In Error to the Circuit Court of the United States for the Southern District of New York:

And now comes the plaintiff in error, by his attorneys, Charles E. Patterson and Alpheus T. Bulkeley, and moves the Court to advance the above entitled cause on the docket, and to assign the same for argument on Monday, December 4th, 1899, to be heard with the case of *High et al. vs. Coyne et al.* (No. 720). 225).

9 This action was brought in the Supreme Court of the State of New York, against John G. Ward, Collector of Internal Revenue, to recover the sum of \$36,827.53, with interest, on account of taxes paid under protest, and assessed against the said George T. Murdock, because of his being executor of the last will and testament of Jane H. Sherman, deceased, under and pursuant to  
 10 the provisions of the 29th and 30th Sections of the Act of Congress, approved June 13, 1898, imposing a tax upon personal property held in charge or trust by administrators, executors and trustees, for the satisfaction and payment of legacies and distributive shares. The ground upon which the recovery is sought is, that the

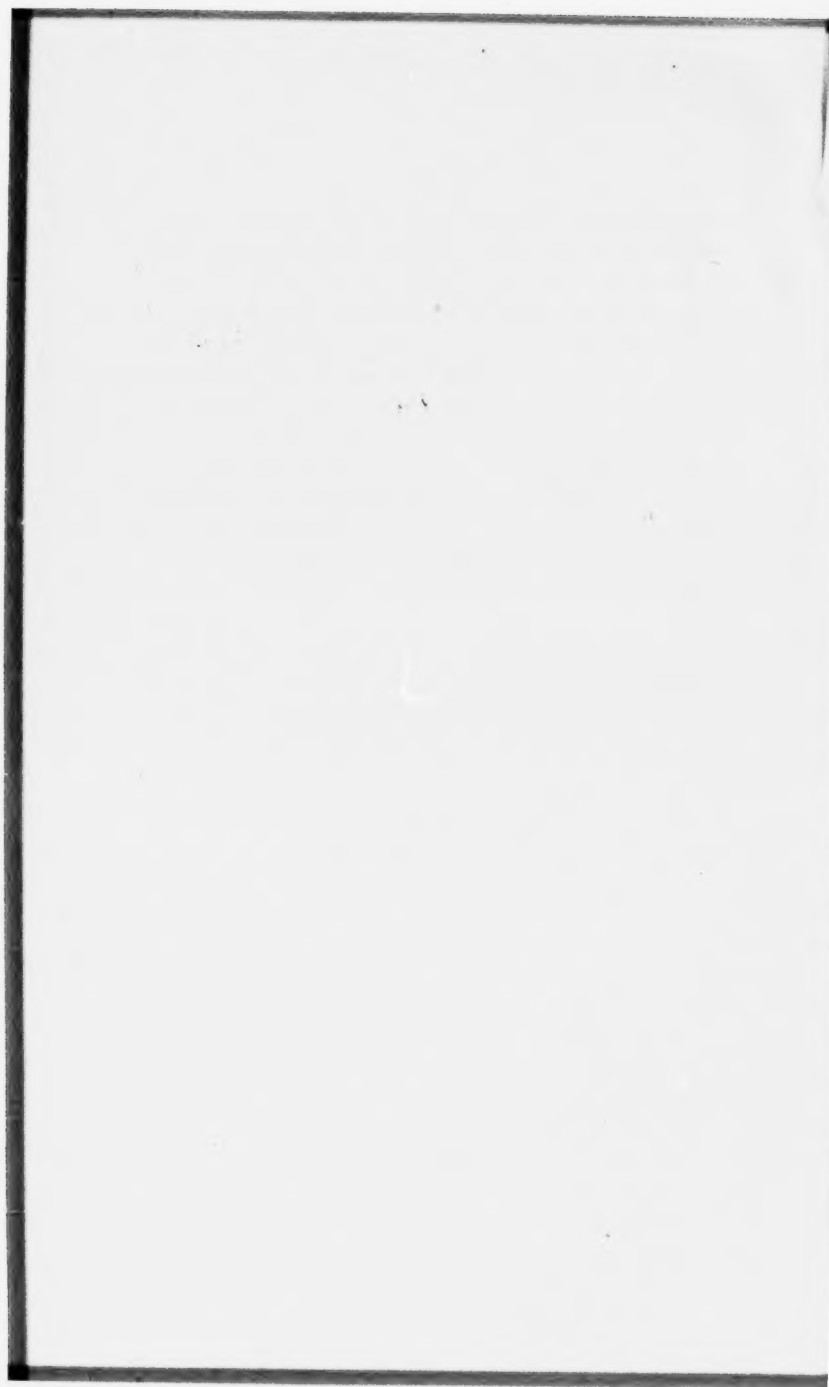


Act of Congress imposing said tax is unconstitutional, and the said tax invalid. The case was removed from the State Court to the Circuit Court of the United States, where the Court held the Act imposing said tax to be constitutional, and that the said tax was valid, and upon demurrer, dismissed the complaint, with costs. This writ of error is prosecuted to reverse that judgment. 11

The case of *High, et al. vs. Coyne, et al.*, above referred to, involves the same question as to the constitutionality of the law, and the validity of the said tax, and has been advanced by order of the Court, and assigned for hearing on the 4th day of December, 1899. 12

This involves, except as to the method of procedure, the same questions that are involved in the case of *High vs. Coyne*, except that there is also involved in the present case, the power of the Congress of the United States to impose such a tax as is here complained of upon government bonds, or the inheritance or transfer of government bonds, and upon an income derived from government bonds. 13

CHARLES E. PATTERSON and  
ALPHEUS T. BULKELEY,  
Attorneys for Plaintiffs in Error. 14



FILED

DEC 1 1899

JAMES H. McKENNEY,  
Clerk.

N<sup>o</sup>. 459.  
*Motion to advance.*

## Supreme Court of the United States,

OCTOBER TERM, 1899. No. 459  
*Filed Dec. 1, 1899.*

GEORGE D. SHERMAN,  
Plaintiff in Error,  
*against*  
THE UNITED STATES,  
Defendant in Error.

2

In Error to the Circuit Court of the United States for  
the Northern District of New York.

3

To the HON. JOHN K. RICHARDS,  
Solicitor General of the United States:

Notice is hereby given, that the plaintiff in error in  
the above entitled cause will move the Supreme Court of  
the United States, on Monday, November 27th, 1899,  
or as soon thereafter as the motion can be heard, to ad-  
vance the above entitled cause on the docket, and to as-  
sign the same for argument on the 4th day of Decem-  
bere, 1899, upon the grounds stated in said motion, a  
copy of which is hereto attached.

4

CHARLES E. PATTERSON and  
ALPHEUS T. BULKELEY,  
Attorneys for Plaintiff in Error.

5

6

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899. No.

|   |  |   |                       |
|---|--|---|-----------------------|
| 7 | GEORGE D. SHERMAN,<br>Plaintiff in Error,<br><i>against</i><br>THE UNITED STATES,<br>Defendant in Error. | } | Motion to<br>Advance. |
|---|--|---|-----------------------|

In Error to the Circuit Court of the United States for  
 the Northern District of New York.

8 And now comes the plaintiff in error, by his attorneys, Charles E. Patterson and Alpheus T. Bulkeley, and moves the Court to advance the above entitled cause on the docket, and to assign the same for argument on Monday, December 4th, 1899, to be heard with the case of *Hugh et al v. Coyne et al.* (No. 729). 225).

9 This action was brought by petition filed in the United States Court for the Northern District of New York, against the United States, to recover the sum of \$8,969.02, with interest, on account of taxes paid under protest by one George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, under the provisions of the 29th and 30th Sections of the Act of Congress, approved June 13, 1898, imposing a tax upon personal property held in charge or trust by  
 10 administrators, executors and trustees, for the satisfaction and payment of legacies and distributive shares, and which said sum of \$8,969.02 was because of the provisions of said Act, and the demand therefor from said executor, paid by said executor from the income and share of said estate, otherwise payable to the plaintiff in error, as a legatee under the will of said deceased.

The ground upon which the recovery is sought is, that 11  
 the sections of said Act imposing said tax are unconstitutional, and the said tax is invalid, and the payment of  
 the same by said executor was involuntary, and under  
 duress, and the money having been paid to the defend-  
 ant by said executor, the plaintiff in error is entitled to  
 have and recover the amount so paid by said executor,  
 deducted from the legacy to the plaintiff in error, as 12  
 money had and received by the defendant in error, to  
 and for the use of the plaintiff in error. The Court be-  
 low held the said sections to be constitutional, and that  
 the said tax was valid, and upon demurrer, dismissed  
 the petition of the plaintiff in error, with costs. This  
 writ of error is prosecuted to reverse that judgment.

The case of *Hugh et al v. Coyne et al.*, above referred 13  
 to, involves the same question as to the constitutionality  
 of the law, and the validity of the said tax, and has been  
 advanced by order of the Court, and assigned for hear-  
 ing on the 4th day of December, 1899. The questions  
 involved upon the hearing of the present appeal are the  
 same as the questions involved in the case of *Hugh v.*  
*Coyne*, except that the plaintiff in error claims as an 14  
 additional ground to errors assigned in the case of *Hugh*  
*v. Coyne*, that a large portion of the estate of Mrs. Sher-  
 man consisted of government bonds, and the portion of  
 the estate set apart to create an income for the benefit  
 of the plaintiff in error, under the provisions of the will  
 of Mrs. Sherman, consisted of government bonds,  
 which were not liable, and the income from which was  
 not liable, to assessment and taxation.

CHARLES E. PATTERSON and

ALPHEUS T. BULKELEY,

Attorneys for Plaintiff in Error.



No. 458 and 459.

Motion for Leave to File Briefs  
IN THE  
Supreme Court of the United States.

FILED

JAN 6 1900

JAMES H. MCKENNEY,

OCTOBER TERM, A. D. 1899.

Filed Jan. 6, 1900.

GEORGE T. MURDOCK, *Executor, &c., Plaintiff in*  
*Error,*  
*vs.*  
JOHN G. WARD, *Collector, &c.,* } No. 458.

and

GEORGE D. SHERMAN, *Plaintiff in Error,*  
*vs.*  
UNITED STATES. } No. 459.

### MOTION FOR LEAVE TO FILE ADDITIONAL BRIEFS.

Now comes Frederic D. McKenney, Esquire, in behalf of Messrs. Evarts, Choate & Beaman, counsellors-at-law, and represents to the court that said counsellors have as clients certain owners of bonds of the United States, who are greatly interested in the questions presented for decision in the above cases, and particularly in the question of the validity and effect of the tax sought to be imposed under the provisions of the act of June 13, 1898, commonly known as the War Revenue law of 1898, upon transfers of such Government bonds, and moves this honorable court to grant leave unto said solicitors to file briefs in said causes within such limits of time as to the court may seem reasonable and right.

FREDERIC D. MCKENNEY,  
*In Behalf of Messrs. Evarts, Choate & Beaman.*